

Of the nine responses to the ANPRM, three commenters were opposed to the waiver as it currently exists. Those comments came from the petitioner, a software company, and a professional engineer. All three argued that the current waiver is out-of-date. Petitioner explained that the waiver is out-of-date because the non-availability problems of 1985–86 no longer exist. Petitioner believes that if there is a permanent waiver, it should be extremely limited in scope, and not be extended to equipment simply because the equipment contains a microprocessor.

Another commenter, the software company, requested that “software” not be included in the waiver because the term is far too broad, and its inclusion does not support the original intent of the Buy America requirement. The waiver was intended to support American software businesses, which were few in number in the technology marketplace of 1985–86. Today, according to the company, there are several American software companies that develop and sell the software needed by transit properties and at a price affordable to transit properties, even smaller ones. As a result, the waiver, in effect, “opens the U.S. applications software market to competition from some very large and well-established foreign firms who market enterprise wide, fully integrated software packages.”

Finally, the professional engineer agreed with petitioner’s position but raised several other issues. He suggested that several additional topics should be opened up for comment, such as the interplay between public safety and microcomputers, the replacement and maintenance problems that arise when components come from foreign sources, the negative economic consequences of a blanket waiver, and the problem of

obsolescence in the domestic market with regards to microcomputers.

### III. Analysis

At petitioner’s request, FTA issued this ANPRM and opened the record. Based on the record developed from this ANPRM, FTA has determined that the permanent waiver for microcomputers should not be revised.

FTA received only nine comments, one of which came from petitioner. That is a particularly small number of comments, especially for an issue that has such broad implications. In addition, the three responses in favor of revoking the waiver, as a whole, did not provide a sufficiently substantive discussion of petitioner’s questions. While some of the comments mention or address some of petitioner’s issues, the comments did not provide thorough discussions of petitioner’s four questions.

Moreover, the majority of comments did not support petitioner’s position; specifically, only two commenters shared petitioner’s position. Most of the commenters who support the current waiver strongly agreed that the U.S. technology marketplace has not changed enough to warrant a change. Notably, APTA, which consists of over 1,250 member organizations, took that position. Based on the responses from its members, APTA wrote that “it would seem that the U.S. marketplace has not changed that significantly since 1986.” If this is, in fact, the case (*i.e.*, that the technology marketplace has not changed), then there is no basis to alter the existing rule. Altering the rule would only create the problems discussed by other commenters, for example, generating a steady stream of waiver requests to FTA, decreasing choices available to transit systems, and increasing costs for transit systems.

Finally, the absence of responses from the U.S. microprocessor industry is notable. Presumably, that industry would have emphatically responded in support of the revocation of the waiver. The waiver greatly impacts their industry, as it opens them up to a great deal of foreign competition, at least with respect to government transit contracts. However, as FTA lacks information from the U.S. microprocessor industry, FTA is left with little basis upon which to support a change in the existing rule.

Given the small number of responses, the lack of support of the public, and the lack of substantive grounding, FTA has decided to withdraw the ANPRM.

### IV. Conclusion

FTA will not revoke or modify the microcomputer waiver as it is set forth in Appendix A of 49 CFR 661.7. However, it should be noted that FTA does not apply the waiver to an entire product because it contains a microcomputer. The parameters of the waiver as it currently exists are that if the end product is itself a microcomputer or software as defined above, Buy America is waived. If, however, the end product contains a microcomputer (*e.g.*, a farecard system), that microcomputer is exempt from the requirements of Buy America, but the rest of the end product must be in compliance. Due to the small number of responses to the ANPRM, the lack of public support for the proposed change, and the lack of substantive arguments to justify the change, FTA has concluded that a change is not warranted at this time.

Issued on: February 21, 2003.

**Jennifer L. Dorn,**  
*Administrator.*

[FR Doc. 03–4552 Filed 2–27–03; 8:45 am]

**BILLING CODE 4910–57–P**